

**TRANSIT SERVICE DIRECT FINANCIAL PARTNERSHIP AGREEMENT
BY AND BETWEEN
KING COUNTY
AND
XXX (SERVICE PARTNERS)**

THIS TRANSIT SERVICE DIRECT FINANCIAL PARTNERSHIP AGREEMENT (the "Agreement") is made by and between King County, a political subdivision of the State of Washington and home rule charter county with broad powers to provide public transportation within the County's geographic boundaries, by and through the King County Department of Transportation, Metro Transit Division (the "County" or "Metro Transit") and [*insert name and organizational form of contracting entity; e.g., XXX, a Washington municipal corporation ("the City" and/or "Service Partner") or, e.g., ABC Corporation, a Washington corporation ("ABC Corp." and/or "Service Partner")*], both of which entities may be referred to hereinafter individually as "Party" or collectively as "Parties."

WHEREAS, in September, 2006 the King County Council adopted Ordinance 15582, the Transit Now Ordinance, directing the submission of a proposition to King County voters to fix and impose an additional sales and use tax of one-tenth of one percent to fund expansion of the King County Metro public transportation system and a variety of transit service improvements; and

WHEREAS, the Transit Now ordinance identified a number of transit service measures to be implemented using the one-tenth of one percent sales and use tax collected through Transit Now that focus on capital, operating, and maintenance improvements that are expected to expand and improve bus service on local streets and arterials within King County; and

WHEREAS, mutually beneficial contractual arrangements with other public and private entities ("service partnerships") that leverage public and private funds to provide both new and better bus service to cities and major employers is one of four key strategies (the "Service Partnerships Program") identified in the Transit Now proposition approved by King County voters in the general election on November 7, 2006; and

WHEREAS, the Service Partnerships Program is also designed and intended to support the service development objectives and financial strategies of the 2002-2007 Six-Year Transit Development Plan (or its successor plans);

WHEREAS, Service Partner has submitted an application for a direct financial partnership for transit service and has met the criteria established by the County for awarding such partnerships; and

WHEREAS, the proposal submitted by Service Partner has been deemed to show a potential gain in ridership; and

WHEREAS, the proposal submitted by Service Partner has been approved by the King County Council,

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND AGREEMENTS SET FORTH HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BY BOTH PARTIES, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to enter into a mutually beneficial contractual relationship for enhanced transit services consistent with the goals and directives of the Transit Now ordinance and initiative as authorized by King County Council Ordinance 15582 (approved in September, 2006) and passed by the voters of King County as Transit Now in the general election on November 7, 2006 to leverage sustainable local resources for transit service and to increase transit ridership.

This Agreement establishes the responsibilities of both Parties in relation to the transit service partnership, including methods for monitoring, improving and terminating the partnership.

2. COUNTY'S RESPONSIBILITIES

- 2.1 The County will provide transit service enhancements in accordance with the service specifications set forth in Attachment A, which is incorporated herein and made a part of this Agreement by this reference, pursuant to which the County and Service Partner will share the fully-allocated cost of the increased service hours at a rate of two-thirds from County funds to one-third from Partner funds, (actual contribution specified in Attachment A). Fully-allocated costs include the cost of fuel, maintenance, driver wages, service supervision, infrastructure maintenance, revenue collection, scheduling, rider information, data analysis, and administrative and management costs. The County's cost allocation model will be used to determine the Service Partner's contribution. The County will operate the service in accordance with its regular procedures and as may be further specified in this Agreement. The Parties understand and agree that, notwithstanding Service Partner's financial contribution, the transit service referenced herein will be open to the general public.
- 2.2 The County will include the new transit service enhancements provided for under this Agreement in its annual route performance monitoring. Enhanced transit service provided for via Service Partnerships will be expected to perform at or above the subarea average for its particular type of service in at least three of the four standard indicators monitored in Metro's annual *Route Performance Report*:
- a) Rides per revenue hour;
 - b) The ratio of fare revenue to operating expense;
 - c) Passenger miles per revenue hour; and
 - d) Passenger miles divided by platform miles.
- 2.3 More specific benchmarks applicable to the enhanced transit service provided for herein are set forth in Attachment A. Three (3) years after implementation of the enhanced transit service provided for herein and annually thereafter, the County will make a determination as to the productivity and viability of the service. The County will notify Service Partner of its assessment of the service's productivity, performance, and ongoing viability. If the County deems that changes can be made to improve the service, the County and Service Partner will discuss possible modifications and may agree on any decisions to modify the service enhancements provided for herein, provided, however, that any such modifications shall be consistent with the requirements set forth in KCC 28.94.020(B)(2). After consultation with Service Partner, if the County determines that the enhanced service provided for herein is not viable based upon performance, and proposed changes are insufficient to boost productivity beyond a minimum threshold as may be established and the Parties cannot agree on a substitute investment on a different route or a different corridor, the County will notify Service Partner of its intention to terminate the Agreement.

3. SERVICE PARTNER'S RESPONSIBILITIES

- 3.1 Service Partner will contribute, via billings twice per year, as specified in Section 5.1 of this Agreement, at least one-third of the fully allocated cost of the enhanced service described in Attachment A, in an amount not less than US\$100,000 per year for five (5) years to add to existing transit service or a minimum of US\$200,000 per year for five (5) years to implement new transit service. The amount of Service Partner's

actual yearly contributions, over and above the minimum yearly contributions specified in this Section 3.1, are to be determined by application of the cost allocation calculation specified in Attachment A.

4. TERM OF AGREEMENT AND APPROVAL BY KING COUNTY COUNCIL

4.1 The term of this Agreement is for five (5) years which shall commence on ____, 2007 and expire at the end of that initial five year term in ____, 2012 unless extended or earlier terminated pursuant to the terms of this Agreement. If after five (5) years the enhanced transit service is deemed viable by the County pursuant to the performance indicators set forth in Section 2.2 of this Agreement and the additional performance benchmarks specified in Attachment A, and Service Partner desires to have Metro Transit continue to provide the enhanced transit service beyond the initial five year period, this Agreement may be extended by the Transit General Manager for an additional five years without additional approval by the King County Council.

4.2 This Agreement is subject to review and approval by the King County Council.

5. INVOICES/PAYMENT PROCEDURES

5.1 The County will invoice Service Partner twice each year for its contribution, as specified in Section 3.1 of this Agreement, to the transit service provided for herein. Service Partner will receive two (2) billings each calendar year for the actual costs incurred by the County to operate the service.

5.2 An estimate of the total service costs based on scheduled service hours is shown in Attachment A. This estimate will be adjusted in January each year, based on the per mile and per hour rates for that year. This adjustment will be provided to the Service Partner.

5.3 Service Partner shall make payment within forty-five (45) days after receipt of an invoice. Should Service Partner fail to pay the County the amount due within forty-five (45) days of receipt of a billing invoice from the County, a late payment assessment shall be applied to any outstanding balance due for that invoice. The late payment assessment shall be fixed at a rate not to exceed that allowable under Washington state law.

6. INDEMNIFICATION AND LEGAL RELATIONS

6.1 It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other person or entity. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one Party or its contractors or subcontractors shall be deemed, or represent themselves to be, employees, agents, contractors or subcontractors of the other Party.

6.2 Each Party shall comply, and shall ensure that its contractors and subcontractors, if any, comply with all federal, state and local laws, regulations, and ordinances applicable to the work and services to be performed under this Agreement.

6.3 Each Party shall protect, defend, indemnify and save harmless the other Party, its elected officials, officers, officials, employees and agents while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from each Party's own negligent acts or omissions. Each Party agrees that it is fully responsible for the acts and omissions of its own subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by

the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

- 6.4 Each Party's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.
- 6.5 This Agreement shall be interpreted in accordance with the laws of the State of Washington. The Superior Court of King County, Washington, located in Seattle, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.
- 6.6 The provisions of this section shall survive any termination of this Agreement.

7. CHANGES AND MODIFICATIONS

This Agreement may be amended or modified only by prior written agreement signed by the Parties hereto.

8. TERMINATION OF AGREEMENT

- 8.1 Either Party may terminate this Agreement, in whole or in part, in writing if the other Party substantially fails to fulfill any or all of its obligations under this Agreement through no fault of the other; provided, however, that, insofar as practicable, the Party terminating the Agreement will give written notice of its intent to terminate not less than 135 calendar days prior to the County's February, June or September service change, delivered by certified mail, return receipt requested.
- 8.2 In addition to termination under Paragraph 8.1 of this Section, the County may terminate this Agreement pursuant to the provisions of Section 2.3 of this Agreement, in whole or in part, provided, that Service Partner will be given written notice of the County's intent to terminate not less than 135 calendar days prior to the County's February, June or September service change, delivered by certified mail, return receipt requested.
- 8.3 If either Party terminates, Service Partner will pay the County a pro-rated amount for services performed in accordance with the Agreement to the date of termination.

9. FORCE MAJEURE

Either Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, earthquake or acts of nature; strikes or labor actions; commandeering material, products, or facilities by the federal, state or local government; and/or national fuel shortage, when satisfactory evidence of such cause is presented to the other Party, and provided further that such non-performance is beyond the control and is not due to the fault or negligence of the Party not performing. In no event, however, shall this provision eliminate the obligation to make payment to the County for work performed in accordance with this Agreement.

10. WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by authorized Parties and attached to the original Agreement.

11. ASSIGNMENT

This Agreement shall be binding upon the Parties, their successors, and assigns; provided, however, that neither Party shall assign or transfer in any manner any interest, obligation or benefit of this Agreement without the other's prior written consent.

12. NO THIRD PARTY BENEFICIARIES

Nothing in this Agreement, express or implied, is intended to confer on any person or entity other than the Parties hereto and their respective successors and assigns any rights or remedies under or by virtue of this Agreement.

13. MUTUAL NEGOTIATION AND CONSTRUCTION

This Agreement and each of the terms and provisions hereof shall be deemed to have been explicitly negotiated between, and mutually drafted by, the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either Party.

14. ALL TERMS AND CONDITIONS

This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties related to the subject matter hereof and constitutes the entire agreement between the Parties. This Agreement may be amended only by written agreement of both Parties.

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

15. CONTACT PERSONS

The County and Service Partner shall designate a contact person for purposes of sending inquiries and notices regarding the execution and fulfillment of this Agreement.

	Service Partner
Contact Name	
Title	
Address	
Telephone	
Fax	
E-Mail	

	King County
Contact Name	
Title	
Address	
Telephone	

Fax	
E-Mail	

IN WITNESS WHEREOF:

The Parties hereto have executed this Agreement on the _____ day of _____, 2007.

PARTNER

By _____

Title _____

KING COUNTY

By _____

Title _____

ATTACHMENT A
Direct Financial Partnership Scope of Work

A. Minimum Actions

1. Minimum Actions to be Undertaken by Service Partner

Service Partner agrees to contribute \$xx per year for five (5) (or more) years for new (or additional) service on Route xxx as defined in Service Description of this Attachment A. The actual annual cost Service Partner agrees to pay on an annual basis shall be determined in accordance with Section 5.2 of this Agreement.

2. Minimum Actions to be Undertaken by County

The County will advertise the new service via its normal marketing channels, including timetables in customer service kiosks throughout King County, Metro Transit's web site and information signs at bus stops.

B. Supporting Actions

1. Service Partner agrees to implement additional actions that are likely to increase ridership on the new service, including any or all of the following:

- *Conduct promotional activities*
- *Provide incentives to employees and riders;*
- *Establish limits on parking price or supply for SOV parking within the area served by the new service;*
- *Take other policy actions that support the new service;*
- *Take other actions that are likely to increase ridership on the new service.*

[list/describe the supporting actions the Service Partner has agreed to undertake]

2. The County agrees to undertake the following supporting actions:

[list/describe the supporting actions the County has agreed to undertake]

C. Service Description

[list/describe the enhanced service that will be provided under this Agreement]

D. Service Costs

(Based on spreadsheet attached hereto as Exhibit 1 entitled “Preliminary Cost Estimate,” which is incorporated into and made a part of this Agreement by this reference.)

[Exhibit 1 will be developed for each Agreement consistent with Section C above]

Total annual hours: TBD

Estimated fully-allocated annual cost (County’s + Service Partner’s cost): TBD

Service Partner’s estimated annual share of fully-allocated annual cost: TBD

E. Benchmarks for Evaluating Route Performance

Metro Transit has a consistent, formal route performance evaluation process to identify individual routes that may require modification, expansion or termination. Routes are grouped by subarea and time period for similarity in operating conditions. Each partnership route will be compared by time period to other routes in its subarea to ascertain performance level. Data for a particular year is typically available by the middle of the following year. The comparison will be made at the time the data is available.

A group of routes will have both “strong” and “below minimum” performance routes, as defined by thresholds based on the average performance of the group. Routes at the extremes of performance are considered for changes. Routes with “strong performance” are considered for expansion; “below minimum performance” routes are evaluated for changes to improve performance, or for discontinuation if performance does not improve after changes are tried.

The benchmarks for the service additions applicable to this Agreement are as follows:

[list/describe the benchmarks]